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U.S. Citizenship
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FILE: EAC 05 008 51934 Office: VERMONT SERVICE CENTER Date: OCT 07 2005

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maui Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is an IT professional consulting services company. It seeks to employ the beneficiary permanently in the United States as a "manager, finance and administration" pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and denied the petition accordingly.

On appeal, counsel notes that the director failed to issue the request for additional evidence discussed in the director's decision and asserts that the director erred in denying the petition without first issuing such a request. The petitioner, through counsel, submits additional evidence.

The director's decision appears to relate to this petitioner as the net income and net current assets discussed for 2001, 2002 and 2003 are those that appear on the petitioner's tax returns for those years. The director's decision, however, contains many statements that are factually incorrect. Specifically, the director asserts that the petitioner sought to classify the beneficiary as a skilled worker or professional pursuant to section 203(b)(3) of the Act, when, in fact, the petitioner seeks to classify the beneficiary as an advanced degree professional or an alien of exceptional ability pursuant to section 203(b)(2) of the Act. In addition, the director states that the petition was received on July 13, 2004 with a priority date of February 14, 2001, when, in fact, the petition was filed on October 12, 2004 with a priority date of May 30, 2001. The director further stated that the proffered wage listed on the labor certification was \$67,000 per year. In fact, the proffered wage was only \$59,500.

More seriously, the director referenced documents that are not in the record and actions taken by the director that he did not take. Specifically, the director referenced alterations to the petitioner's 2000 corporate tax return. That document is not in the record. Similarly, the director discusses Forms W-2 for 2001 and 2002, when the only Form W-2 submitted is a 2003 Form W-2. The director also asserted that he issued a request for additional evidence on October 21, 2004 and discussed a response to that request. The record contains no such request or response.

Given the factual errors in the director's decision, we will remand this matter for a decision that properly addresses the evidence of record. Thus, we need not and will not assess the merits of counsel's remaining assertions on appeal. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.